

FILED
IN CLERKS OFFICE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2007 SEP 28 A 11: 48

U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES OF AMERICA,)
ex rel. PHILLIP BARLOW,)

Plaintiff,)

v.)

BRISTOL MYERS SQUIBB, *et al.*,)

Defendants.)

Civil Action No. 04-11540-MLW

FILED UNDER SEAL

**STIPULATION OF DISMISSAL
AS TO CLAIMS AGAINST BRISTOL-MYERS SQUIBB COMPANY**

Civil Action No. 04-11540-MLW is an action under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3729, *et seq.*, filed by relator Phillip Barlow against Bristol Myers Squibb Company ("BMS").

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b)(1), and in accordance with the terms of the Settlement Agreement among the United States, BMS, and relator Barlow, the parties hereby stipulate, through their undersigned counsel, to the entry of an order (1) dismissing with prejudice all claims asserted on behalf of the United States against BMS in Civil Action No. 04-11540-MLW concerning the Covered Conduct as defined in Preamble Paragraph N(3) of the Settlement Agreement, and (2) dismissing with prejudice to relator and without prejudice to the United States all remaining claims asserted on behalf of the United States against BMS except any allegations that BMS promoted Reyataz for uses not approved by the Food and Drug Administration to the extent those allegations are set forth in Paragraphs 26 through 36 of

Section B of the Complaint as of the date it was filed on or about July 9, 2004.

Any allegations in Paragraphs 26 through 36 of the complaint that BMS utilized the consulting programs identified in Preamble Paragraph N(3) of the Settlement Agreement to cause false claims to be submitted for any of the drugs identified in Paragraph B to the Settlement Agreement, including Reyataz, shall be dismissed with prejudice.

Relator and BMS further stipulate that: (1) as to the dismissed allegations, the Court shall retain jurisdiction over the case to decide issues concerning relator's expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d); and (2) the dismissal shall be without prejudice to (a) Relator's claims against BMS to entitlement under 31 U.S.C. § 3730(d) to expenses, attorneys' fees, and costs arising out of his claims against BMS, and (b) BMS's right to challenge or seek dismissal of relator's claim to recover expenses, attorneys' fees, and costs on any grounds.

Relator, on behalf of himself, his heirs, successors, attorneys, agents, and assigns, stipulates that the Settlement Amount set forth in the Settlement Agreement and the terms and conditions described therein are fair, adequate, and reasonable under all the circumstances, that he will not challenge the settlement pursuant to 31 U.S.C. § 3730(c)(2)(B), and that he expressly waives the opportunity for a hearing on any objection to the settlement pursuant to 31 U.S.C. § 3730(c)(2)(B).

This stipulation has no effect on claims or allegations against any defendants other than BMS in Case No. 04-11540-MLW.

The parties respectfully request that the Court enter an order in the form of the attached proposed order.

Sep 25 07 04:54p

Greene & Hoffman, P.C.

16172613558

p.2

Respectfully submitted,

PETER D. KEISLER
ASSISTANT ATTORNEY GENERAL

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

By:



GREGORY SHAPIRO
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3366

JOYCE R. BRANDA
ANDY J. MAO
Attorneys
U.S. Department of Justice, Civil Division
Post Office Box 261, Ben Franklin Station
Washington, D.C. 20044
Telephone: 202-616-0539


Dated:

9/28/07

COUNSEL FOR RELATOR:

Dated:

9/25/07



THOMAS M. GREENE
Greene & Hoffman
125 Summer Street - Suite 1410
Boston, MA 02110

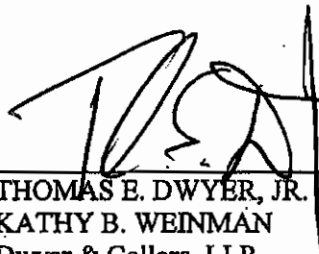
COUNSEL FOR BRISTOL-MYERS
SQUIBB COMPANY:

Dated:

9/25/07



STEPHEN J. EMMELT
MITCHELL J. LAZRIS
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004-1109



THOMAS E. DWYER, JR.
KATHY B. WEINMAN
Dwyer & Collora, LLP
600 Atlantic Avenue
Boston, MA 02210-2211

Dated: _____

9/26/07